

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

In re Application)	Examiner: Paula L. Craig
Michael T. Morman et al.)	
)	Art Unit: 3761
Serial No.: 10/730,493)	
)	Deposit Account: 04-1403
Filed: December 8, 2003)	
)	Customer No.: 22827
Confirmation No.: 2537)	

Title: ABSORBENT ARTICLE WITH ELASTOMERIC BORDERED NECKED
MATERIAL BODYSIDE LINER AND METHOD OF MAKING

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated _____, of the Examiner finally rejecting claims _____.
2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy).
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
4. ☐ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
5. ☐ "Small entity" verified statement filed: [] herewith [] previously.

6. **FEE CALCULATION:**

	Fees
If box 1 above is X'd enter \$ 510.00	\$ <u>0.00</u>
If box 2 above is X'd enter \$ 510.00	\$ <u>510.00</u>
If box 3 above is X'd enter \$1,030.00	\$ <u>0.00</u>
If box 4 above is X-d enter -0- (no fee)	\$ <u>0.00</u>

PETITION is hereby made to extend the original due date of November 5, 2008, hereby made for an extension to cover the date this response is filed for which the requisite fee is enclosed (1 month \$120; 2 months \$460; 3 months \$1,050; 4 months \$1,640, 5 months \$2,230

\$ 120.00

SUBTOTAL: \$ 630.00

Less any previous extension fee paid since above original due date. - \$ 0.00

Less any previous fee paid for prior Notice of Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

Less any previous fee paid for submitting Brief on prior Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

SUBTOTAL: \$ 630.00

If "small entity" verified statement filed ☐ previously,
☐ herewith, enter one-half (½) of subtotal and subtract - \$ 0.00

TOTAL FEE ENCLOSED: \$ 630.00

- ☐ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☒ Charge to credit card
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. shown in the heading hereof. This statement does not authorize charge of the issue fee in this case.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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APPELLANT'S ORIGINAL APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.37 for the subject application, Appellant hereby
submits its original appeal brief to the Examiner's Final Action mailed June 4, 2008.

1. REAL PARTY IN INTEREST:

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of the Applicants' entire right title and interest.

2. RELATED APPEALS AND INTERFERENCES:

Serial No. 10/730,364.

3. STATUS OF CLAIMS:

Claims 1-35 are pending. Claims 7, 8, 10, 11, 14 and 22-35 have been withdrawn from consideration. Appellant appeals the rejections of claims 1-6, 9, 12, 13 and 15-21, which are under final rejection mailed on June 4, 2008.

4. STATUS OF AMENDMENTS:

The claims were not amended after the final rejection from which this appeal is taken.

5. SUMMARY OF CLAIMED SUBJECT MATTER:

Page and line numbers are references to Appellant's patent application.

Independent claim 1:

As shown in FIGs. 3 – 9 and explained at page 18, lines 24 – 27, there is an absorbent article 100.

As shown in FIG. 3 and explained at page 18, lines 27 – 30 and page 19, lines 5 – 10, the absorbent article 100 includes a chassis 120 having a front waist region 114, a

back waist region 112, and a crotch region 116 extending between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 19, lines 11 – 12 and 31 – 33; page 20, lines 3 – 6; page 21, lines 17 – 21 and 24 – 30; page 23, line 13 through page 24 line 18; page 25, lines 5 – 8 and 14 – 15; page 26, lines 11 – 17 and page 27, lines 17 – 19, 25 – 27 and 30 – 33, the absorbent article 100 includes an outer cover member 130 extending longitudinally between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 19, lines 11 – 14; page 20, lines 3 – 6 and 31 – 33; page 21, lines 17 – 18 and 24 – 30; page 22, lines 16 – 18; page 25, lines 6 – 8; page 26, lines 11 – 13 and page 27, lines 17 – 19, the absorbent article 100 includes a bodyside liner 128 extending longitudinally between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 18, lines 11 – 14; page 21, lines 17 – 21 and page 28, line 3 through page 30, line 9, the absorbent article 100 includes an absorbent body structure 132 sandwiched between said outer cover member 130 and said bodyside liner 128.

As shown in FIGs. 1 – 9 and explained at page 10, line 25 through page 15, line 30; page 21, lines 17 – 18; and page 22, lines 12 – 25, the bodyside liner 128 comprises a material 10 having a necked base layer 16b of a fluid permeable material. As shown in FIG. 1 and explained at page 13, lines 6 – 13 and page 11, line 25 through page 12, line 10, the base layer material 16 becomes necked base layer 16b by being tensioned in a first direction.

As shown in FIGs. 1, 1A, 2A, 2B, and 2C and explained at page 3, lines 17 – 26; page 10, line 31 through page 18, line 23 and page 14, lines 12 – 15, at least a first and a second strip of elastomeric material 18, 20 is bonded directly to said necked base layer material 16b with a space between said strips such that a center necked region 12 of said base layer material is bordered on at least two longitudinally extending sides by flat, planar composite regions 14 of said elastomeric materials and said base layer material. As shown in FIGs. 3 – 9 and explained at page 22, line 16 through page 23, line 14, the center region 12 is generally aligned with said absorbent body structure 132.

As explained at page 3, line 27 through page 4, line 1 and page 22, lines 25 – 27 and lines 31 – 33, the center region 12 of necked base layer material is bonded directly to the immediately underlying portion of said absorbent body structure 132 in registry with the center region 12 of necked base layer material in its necked condition. As shown in FIG. 2A, and explained at page 4, lines 1 – 2; page 13, lines 7 – 13 and 31 – 32 and page 14, line 23 through page 15, line 4, the composite regions 14 are stretchable in at least a second direction of said absorbent article 100.

Independent claim 18:

As shown in FIGs. 3 – 9 and explained at page 18, lines 24 – 27, there is an absorbent article 100.

As shown in FIG. 3 and explained at page 18, lines 27 – 30 and page 19, lines 5 – 10, the absorbent article 100 includes a chassis 120 having a front waist region 114, a back waist region 112, and a crotch region 116 extending between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 19, lines 11 – 12 and 31 – 33; page 20, lines 3 – 6; page 21, lines 17 – 21 and 24 – 30; page 23, line 13 through page 24 line 18; page 25, lines 5 – 8 and 14 – 15; page 26, lines 11 – 17 and page 27, lines 17 – 19, 25 – 27 and 30 – 33, the absorbent article 100 includes an outer cover member 130 extending longitudinally between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 19, lines 11 – 14; page 20, lines 3 – 6 and 31 – 33; page 21, lines 17 – 18 and 24 – 30; page 22, lines 16 – 18; page 25, lines 6 – 8; page 26, lines 11 – 13 and page 27, lines 17 – 19, the absorbent article 100 includes a bodyside liner 128 extending longitudinally between said front and back waist regions.

As shown in FIGs. 3 – 9 and explained at page 18, lines 11 – 14; page 21, lines 17 – 21 and page 28, line 3 through page 30, line 9, the absorbent article 100 includes an absorbent body structure 132 sandwiched between said outer cover member 130 and said bodyside liner 128.

As shown in FIGs. 1 – 9 and explained at page 10, line 25 through page 15, line 30; page 21, lines 17 – 18; and page 22, lines 12 – 25, the bodyside liner 128 comprises a material 10 having a necked base layer 16b of a fluid permeable material. As shown in FIG. 1 and explained at page 13, lines 6 – 13 and page 11, line 25 through page 12, line 10, the base layer material 16 becomes necked base layer 16b by being tensioned in a longitudinal direction. As shown in FIGs. 1, 1A, 2A, 2B and 3 – 9 and explained at page 10, line 31 through page 18, line 23, the necked base layer includes a center region 12 extending in the longitudinal direction and disposed between a first

side region 14 extending in the longitudinal direction and a second side region 14 extending in the longitudinal direction.

As shown in FIGs. 1, 1A, 2A, 2B and 3 – 9 and explained at page 3, lines 17 – 26; page 10, line 31 through page 18, line 23 and page 14, lines 12 – 15, a strip of elastomeric material 18 or 20 is bonded directly to said necked base layer material 12 along said longitudinally extending first side region to form a flat, planar composite region 14 and such that said center region 12 of said necked base layer material is adjacent a longitudinally extending composite region 14 of said elastomeric material 18 or 20 and said base layer material 12.

As explained at page 3, line 27 through page 4, line 1 and page 22, lines 25 – 27 and lines 31 – 33, the center region 12 of necked base layer material is generally overlying and bonded directly to the immediately underlying portion of said absorbent body structure 132 in registry with the center region 12 of necked base layer material in its necked condition.

As explained at page 22, lines 25 – 27, the center region 12 of base layer material remains generally non-elastic. As shown in FIGs. 3 – 9 and explained at page 4, lines 1 – 2 and page 23, lines 8 – 13, the composite region 14 is stretchable in at least a transverse direction in use of said absorbent article.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

The final rejection of claims 1-6, 9 and 18-21 under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al (USP 5,846,232).

The final rejection of claims 12, 13 and 15-17 under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al in view of Popp et al (USP 6,716,205).

7. ARGUMENT:

A. Claims 1-6, 9 are patentable under 35 U.S.C. 103(a) over Serbiak et al

Appellant's article as described in claim 1 includes a bodyside liner that is a composite of base layer material that is necked in a first direction and that is bonded directly to at least a first strip of elastomeric material and a second strip of elastomeric material spaced apart from the first strip. Specifically, the bodyside liner of independent claim 1 is constructed with the following requirements (emphasis added):

at least a first and a second strip of elastomeric material **bonded directly** to said necked base layer material **with a space between said strips** such that a center necked region of said base layer material is bordered on at least two longitudinally extending sides by flat, planar composite regions of said elastomeric materials and said base layer material, said center region generally aligned with said absorbent body structure;

This **space between the two strips of elastomeric material** that are bonded directly to the necked base layer is important so that stretching of the elastomeric strips does not propagate to the center region between the strips and adversely affect the article's liquid handling structure in that center region. The effect of this structure is explained at page 23, lines 11 – 13 of appellant's specification as follows (emphasis added):

The composite strips 14 material will stretch in the transverse direction **without imparting distorting tension to the non-extensible center strip 12 and underlying absorbent body structure 132.**

Moreover, the importance of this space is explained at page 4, lines 9 – 16 of appellant's specification (emphasis added):

The **side strips** of composite material may extend out to serve as **elastomeric side portions** and **provide** the absorbent article chassis with desired degrees of **stretch without compromising the structural integrity or characteristics of the** liquid permeable **center necked region** or underlying absorbent body structure. The **side panels and an elastic outer cover may extend independently** from the absorbent body structure, in which case the absorbent structure need not extend and thus have its **liquid handling** properties change when the chassis is stretched.

Lines 11 – 23 of paragraph 7 on pages 4 – 5 of the June 2008 Final Office Action contend that Serbiak et al teaches (emphasis added):

At least a first and a second strip of elastomeric material attached to the necked base layer material **with a space between the strips** such that a center necked region of the base layer material is bordered on at least two longitudinally extending sides by flat planar composite regions of the elastomeric materials and the base layer material, with the center region generally aligned with the absorbent body structure 36 (**first and second strips include elastic layer 28** in extensible zones 30 – 30D ; center region includes the crosshatched area of absorbent core 36; Figs. 1-9, col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, col. 8, lines 26-48, col. 9, lines 18-23; Claims 10, 17, 23, 35; note that Serbiak teaches that the elastic layer 28 can be disposed where the extensible zones 30-30D are and does not need to extend over a greater area; the extensible zones are indicated in the figures by circles).

As quoted above, the June 2008 Final Office Action states that Serbiak et al's teaching of the **“first and second strips”** required by claim 1 **“include elastic layer 28.”** As shown in Fig. 2 of Serbiak et al, elastic layer 28 is **continuous**, and thus Serbiak et al elastic layer 28 fails to leave **a space between said strips** as required by

claim 1. As such, the elastic in Serbiak et al's center region would compromise the **structural integrity or characteristics of the liquid permeable center necked region** or underlying absorbent body structure.

In attempting to overcome deficiencies in the logic of the Final Office Action, the July 31, 2008 Advisory Action contends:

Serbiak teaches that the elastomeric material of elastic layer 28 may be present in strips (Figs. 1-6, col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, col. 8, lines 26-48, col. 9, lines 18-23, Claims 10, 17, 23, 35). Serbiak teaches that the elastic layer can be disposed where the extensible zones 30-30D are and does not need to extend over the non-extensible area (col. 9, lines 17-23, Claim 10). The extensible zone 30-30D are indicated in the figures of Serbiak by circles, while non-extensible zones are shown by cross-hatching and/or absence of circles (Figs. 1, 3, 5, 6, col. 6, lines 24-31, col. 8, lines 26-48). For example, in Fig. 1, a cross-hatched non-extensible area 37 is flanked on either side by extensible zone 30 shown by the circles; as Serbiak clearly teaches that the elastic layer 28 is optional in the non-extensible area, this teaches a space between strips (col. 8, lines 8-48, col. 9, lines 18-23, Claim 10). In Fig. 6, a non-extensible area 46 is flanked one either side by extensible zones 30A and 30C on the left of the figure and by 30B and 30D on the right of the figure; as Serbiak teaches that the elastic layer is optional in the non-extensible area, this teaches a space between the strips (col. 9, line 18 to col. 10, line 15, Claim 10).

What this argument of the July 2008 Advisory Action fails to acknowledge is the simple fact that in none of the cited instances is the embodiment constructed like the article required by claim 1. If it were, then the rejection would be under Section 102(b). But the rejection is under Section 103(a). So the Final Office Action is relying on Serbiak et al as a source of different elements that are to be taken from different embodiments and reconstructed according to appellant's claim 1. But this is not proper

because Serbiak et al never acknowledges that a space would be necessary to prevent the elastic layer 28 from **compromising the structural integrity** of the center necked region of a bodyside liner or an underlying absorbent body structure with a desired **capillary** configuration. Indeed, **not a single instance** of any of the words/phrases used in pages 4, 22 and 23 of appellant's specification (as quoted above) to describe the salient characteristics of appellant's article, namely, "capillary," liquid handling," "integrity," "compromise," "compromising," "independently," "transverse," "distort," "distorting," even appears in Serbiak et al.

Appellant therefore respectfully submits that claims 1 – 6 and 9 are patentable under 35 U.S.C. 103(a) over Serbiak et al for this first reason.

The bodyside liner of independent claim 1 is constructed with the following requirements (emphasis added):

wherein said **center region** of necked base layer material is **bonded directly to the immediately underlying portion of said absorbent body structure in registry with the center region of necked base layer material** in its necked condition and said composite regions are stretchable in at least a second direction of said absorbent article.

As explained at page 3, line 27 through page 4, line 1 of appellant's specification (emphasis added):

The **composite material is attached** to another material, for example an **absorbent body structure**, while maintaining a tensioning force on the material. The tensioning force is relaxed after such attachment. In this way, the **base material** between the elastomeric side strips **maintains its necked configuration** and has a softened "fluffy" characteristic. This configuration is beneficial in that certain base layer materials have their **ideal capillary**

structure from a fluid handling aspect in a necked state of the material.

As explained at page 22, line 31 through page 23, line 13 of appellant's specification (emphasis added):

It may be desired to adhere the entire overlying portion of the strip 12 to the absorbent structure 132 (or surge layer 148) with an adhesive 183. With this configuration, the **capillary structure** of the necked overlying region of the strip 12 **is maintained** even with transverse stretching of the composite strips 14.

As explained at page 4, lines 6 – 16 of appellant's specification (emphasis added):

The center region overlies an absorbent body structure in the absorbent article and is adhered to the underlying absorbent body structure **to ensure that its capillary structure in the necked state of the material does not change upon stressing (stretching) the elastomeric portions.**

As explained at page 22, lines 25 – 27 of appellant's specification, "[t]he necked strip or region 12 of the composite material 10 is extensible but becomes non-extensible when disposed against and adhesively attached to the absorbent body structure 132." That is why claims 1 and 18 require the **center region** of necked base layer material generally overlying and **bonded directly to the immediately underlying portion of the absorbent body structure in registry with the center region** of necked base layer material **in its necked condition**. In this way, the center region of necked base layer material and the underlying absorbent body structure are not stretched, and the ideal capillary structure of the absorbent body structure is not disturbed by stretching.

Lines 4 – 6 on page 6 and lines 14 – 15 on page 8 of the June 2008 Final Office

Action acknowledge that Serbiak et al **does not teach that the first and second strips of elastomeric material are bonded directly to the necked base layer material.**

Lines 6 – 8 on page 6 and lines 15 – 17 on page 8 of the June 2008 Final Office Action acknowledge that Serbiak et al **does not teach** that attachment of the center region of the base layer material to the underlying portion of the absorbent body structure is by **direct bonding.**

To compensate for these deficiencies in Serbiak et al, lines 7 – 16 of page 6 and line 17 on page 8 through line 3 on page 9 of the June 2008 Final Office Action contend (emphasis added):

In light of Serbiak's teaching of securing the elastomeric material to the necked base layer material of the bodyside liner, it would have been obvious to one of ordinary skill in the art to **directly bond the elastomeric material to the necked base layer material.** In light of Serbiak's indication in Figs. 1, 3 and 5-6 of attachment to the absorbent body structure being apparent in a top view, and Serbiak's teaching that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, it would have been obvious to one of ordinary skill in the art to include **direct bonding** to the base layer material of the bodyside liner to the underlying portion of the absorbent body structure.

The problem with these contentions is that they are not stated in the disclosure of Serbiak et al. Instead, Serbiak et al states at column 6, lines 12 – 14 that the base structure 26 comprises the cover 22 and bodyside liner 24 and then states at column 8, lines 17 – 20 that (emphasis added):

the absorbent core 36 is **fixed to the base structure 26** to form a nonextensible area 37 defined by the area over which the absorbent core is **effectively**

attached to the base structure 26.

Thus, “fixed to the base structure 26” and “effectively attached to the base structure 26” may mean only “fixed to the cover 22” and “effectively attached to the cover 22.” And “fixed” and “effectively attached” in no way assures that it is even bonded directly to the cover 22 or the bodyside liner 24. This deficiency is especially suggested by Serbiak et al column 8, lines 8 – 9, which states that in Serbiak et al Fig. 2 “absorbent core 36 is shown mounted between bodyside liner 24 and elastic layer 28.” “Mounted between” is not even “fixed” to the bodyside liner 24 or “effectively attached” to the bodyside liner 24, much less “bonded directly” to the bodyside liner 24.

Thus, the only supportable contention about Serbiak et al is that it shows indirect attachment of certain elements. Accordingly, the essence of this contention of the June 2008 Final Office Action is that indirect attachment of certain elements in Serbiak et al suffices to render direct bonding of certain of the same sorts of elements obvious to the person of ordinary skill.

However, this conclusion of the June 2008 Final Office Action completely discounts the 180 degree difference between something that is **directly bonded** versus something that is **indirectly attached**. The error of such a conclusion is self-evident.

Moreover, this erroneous conclusion of the June 2008 Final Office Action fails to account for, much less overcome, the predisposition of the skilled artisan to avoid the risk of degrading either the permeability of the bodyside liner or the capillary absorbency of the portion of the absorbent body structure facing the bodyside liner, if the bodyside liner portion of the absorbent body structure is bonded directly to the immediately underlying portion of the absorbent body structure.

In the Advisory Action mailed on July 31, 2008, the Office makes the following argument:

Applicant argues that Serbiak never says that the absorbent core 36 is to be bonded directly to the bodyside liner 24. However, Serbiak teaches that the absorbent core 36 is mounted between the outer cover layer 22 and the bodyside liner layer 24 (col. 6, lines 41-43). Serbiak teaches that the absorbent core 36 is fixedly attached to the base structure 26 to form a nonextensible area 37 (col. 4, lines 38-42, col. 8, lines 17-26, Claims 3, 12, 31). The base structure 26 includes the bodyside liner layer 24 and the outer cover layer 22 (col. 6, lines 10-14, Claim 23). In light of Serbiak's teaching of the absorbent core being mounted between the outer cover and the bodyside liner, and of fixed attachment of the absorbent core to a structure which is described as including the bodyside liner, it would have been obvious to directly bond the absorbent core to the bodyside liner.

The problem with this argument of the July 2008 Advisory Action is that it takes bits and pieces from one embodiment disclosed in Serbiak et al and arbitrarily assumes that Serbiak et al teaches the use of those bits and pieces in other embodiments of Serbiak et al while ignoring the reasons that the bits and pieces were present in the original Serbiak et al embodiment. The Office regards Serbiak et al as something of a smorgasbord that allows the Office to pick and choose whatever it desires and arrange it on a plate so that the structure described by appellant's claim magically reveals itself.

Yet, Serbiak et al fails to appreciate a crucial point disclosed in appellant's specification. Never does Serbiak et al appreciate that direct bonding of the absorbent core to the bodyside liner layer can preserve the capillary structure that is ideally desired for acceptance of the insult liquids. Thus, not only does Serbiak et al fail to disclose direct bonding of the bodyside liner layer to the absorbent core, Serbiak et al fails to present a situation that is the mere combining of known elements in a known

way to achieve a known desired result.

Appellant therefore respectfully submits that claims 1 – 6 and 9 are patentable under 35 U.S.C. 103(a) over Serbiak et al for this second reason.

B. Claims 12, 13 and 15-17 are patentable under 35 U.S.C. 103(a) over Serbiak et al in view of Popp et al

Claims 12, 13 and 15-17 depend on claim 1. Popp et al fails to correct the deficiencies noted above in the Final Office Action's application of Serbiak et al.

Appellant therefore respectfully submits that claims 12, 13 and 15-17 are patentable under 35 U.S.C. 103(a) over Serbiak et al in view of Popp et al.

C. Claims 18-21 are patentable under 35 U.S.C. 103(a) over Serbiak et al

The bodyside liner of independent claim 18 is constructed with the following requirements (emphasis added):

a strip of elastomeric material bonded directly to said necked base layer material along said longitudinally extending first side region to form a flat, planar **composite region** and such that said center region of said necked base layer material is adjacent a longitudinally extending composite region of said elastomeric material and said base layer material, said **center region** of said necked base layer material is adjacent a longitudinally extending composite region of said elastomeric material and said base layer material, said **center region** of necked base layer material generally overlying and **bonded directly to the immediately underlying portion of said absorbent body structure in registry with the center region** of necked base layer material in its necked condition;

As explained at page 4, lines 6 – 9 of appellant's specification (emphasis added):

The center region overlies an absorbent body structure in the absorbent article and is adhered to the underlying absorbent body structure **to ensure that its capillary structure in the necked state of the material does not change upon stressing (stretching) the elastomeric portions.**

As explained at page 22, lines 25 – 27 of appellant's specification (emphasis added):

“[t]he necked strip or region 12 of the composite material 10 is extensible but becomes non-extensible when **disposed against and adhesively attached** to the absorbent body structure 132.” That is why claims 1 and 18 require the **center region** of necked base layer material generally overlying and **bonded directly to the immediately underlying portion of the absorbent body structure in registry with the center region** of necked base layer material in its **necked condition**. In this way, the center region of necked base layer material and the underlying absorbent body structure are not stretched, and the ideal capillary structure of the absorbent body structure is not disturbed by stretching.

Lines 4 – 6 on page 6 and lines 14 – 15 on page 8 of the June 2008 Final Office Action acknowledge that Serbiak et al **does not teach** that the first and second strips of elastomeric material are **bonded directly** to the necked base layer material. Lines 6 – 8 on page 6 and lines 15 – 17 on page 8 of the June 2008 Final Office Action acknowledge that Serbiak et al **does not teach** that attachment of the center region of the base layer material to the underlying portion of the absorbent body structure is by **direct bonding**.

To compensate for these deficiencies in Serbiak et al, lines 7 – 16 of page 6 and line 17 on page 8 through line 3 on page 9 of the June 2008 Final Office Action contend

(emphasis added):

In light of Serbiak's teaching of securing the elastomeric material to the necked base layer material of the bodyside liner, it would have been obvious to one of ordinary skill in the art to **directly bond the elastomeric material to the necked base layer material**. In light of Serbiak's indication in Figs. 1, 3 and 5-6 of attachment to the absorbent body structure being apparent in a top view, and Serbiak's teaching that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, it would have been obvious to one of ordinary skill in the art to include **direct bonding** to the base layer material of the bodyside liner to the underlying portion of the absorbent body structure.

The problem with these contentions is that they exaggerate what is actually stated in the disclosure of Serbiak et al, which states at column 6, lines 12 – 14 that the base structure 26 comprises the cover 22 and bodyside liner 24 and then states at column 8, lines 17 – 20 that (emphasis added):

the absorbent core 36 is **fixed to the base structure 26** to form a nonextensible area 37 defined by the area over which the absorbent core is **effectively attached** to the base structure 26.

Thus, "fixed to the base structure 26" and "effectively attached to the base structure 26" may mean only "fixed to the cover 22" and "effectively attached to the cover 22." And "fixed" and "effectively attached" in no way assures that it is even bonded directly to the cover 22 or the bodyside liner 24. This deficiency is especially suggested by Serbiak et al column 8, lines 8 – 9, which states that in Serbiak et al Fig. 2 "absorbent core 36 is shown mounted between bodyside liner 24 and elastic layer 28." "Mounted between" is not even "fixed" to the bodyside liner 24 or "effectively attached" to the bodyside liner

24, much less “bonded directly” to the bodyside liner 24.

Thus, the only supportable contention about Serbiak et al is that it shows indirect attachment of certain elements. Accordingly, the essence of this contention of the June 2008 Final Office Action is that indirect attachment of certain elements in Serbiak et al suffices to render direct bonding of certain of the same sorts of elements obvious to the person of ordinary skill.

However, this conclusion of the June 2008 Final Office Action completely discounts the 180 degree difference between something that is **directly bonded** versus something that is **indirectly attached**. The error of this conclusion is self-evident.

The June 2008 Final Office Action incorrectly concludes that if Serbiak et al teaches that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, then “it would have been obvious to one of ordinary skill in the art to include **direct bonding** of the base layer material **of the bodyside liner to** the underlying portion of **the absorbent body structure**.” Emphasis added. However, Serbiak et al never says that the absorbent core 36 is to be bonded directly to the bodyside liner 24. Moreover, as explained at Serbiak et al column 8, lines 10 – 11, the absorbent core 36 can be mounted between the elastic layer 28 and the outer cover layer 22, a configuration in which the absorbent body structure 36 cannot be bonded directly to the bodyside liner 24.

Moreover, this erroneous conclusion of the June 2008 Final Office Action fails to account for, much less overcome, the predisposition of the skilled artisan to avoid the risk of degrading either the permeability of the bodyside liner or the capillary absorbency of the portion of the absorbent body structure facing the bodyside liner, if the bodyside

liner portion of the absorbent body structure is bonded directly to the immediately underlying portion of the absorbent body structure.

Appellant therefore respectfully submits that claims 18-21 are patentable under 35 U.S.C. 103(a) over Serbiak et al.

Conclusion

The final rejections of claims 1-6, 9 and 18-21 under 35 U.S.C. 103(a) over Serbiak et al (USP 5,846,232) should be reversed. The final rejections of claims 12, 13 and 15-17 under 35 U.S.C. 103(a) over Serbiak et al in view of Popp et al (USP 6,716,205) should be reversed.

8. CLAIMS APPENDIX:

1. (Previously presented) An absorbent article, comprising:

a chassis having a front waist region, a back waist region, and a crotch region extending between said front and back waist regions;

an outer cover member extending longitudinally between said front and back waist regions;

a bodyside liner extending longitudinally between said front and back waist regions;

an absorbent body structure sandwiched between said outer cover member and said bodyside liner;

said bodyside liner comprising a material having a necked base layer of a fluid permeable material, said base layer material being necked by being tensioned in a first direction;

at least a first and a second strip of elastomeric material bonded directly to said necked base layer material with a space between said strips such that a center necked region of said base layer material is bordered on at least two longitudinally extending sides by flat, planar composite regions of said elastomeric materials and said base layer material, said center region generally aligned with said absorbent body structure; and

wherein said center region of necked base layer material is bonded directly to the immediately underlying portion of said absorbent body structure in registry with the center region of necked base layer material in its necked condition and said composite regions are stretchable in at least a second direction of said absorbent article.

2. (Original) The absorbent article as in claim 1, wherein said first and second strips of elastomeric materials are superimposed on and aligned with lateral sides of said underlying base layer material.

3. (Original) The absorbent article as in claim 1, wherein said first and second strips of elastomeric materials comprise an elastic film, said films being laminated to said base layer material such that said composite regions are neck bonded laminate regions.

4. (Original) The absorbent article as in claim 1, wherein said first and second strips of elastomeric materials are attached to said base layer material in a generally untensioned state.

5. (Original) The absorbent article as in claim 1, wherein said first and second strips of elastomeric materials are attached to said base layer material in a generally tensioned state.

6. (Original) The absorbent article as in claim 1, wherein said base layer material is tensioned in the machine direction prior to attaching said first and second strips of elastomeric materials to opposite lateral sides of said base layer material such that said bodyside liner has longitudinal strips of said composite regions that are stretchable in the cross direction bordering said center machine direction region of said necked base layer material.

7. (Withdrawn) The absorbent article as in claim 1, wherein said base layer material is tensioned in the cross direction prior to attaching said first and second strips of elastomeric materials in the cross direction to opposite longitudinal ends of said

necked base layer material such that said composite regions of said bodyside liner extend generally across said front and back waist regions of said chassis.

8. (Withdrawn) The absorbent article as in claim 1, wherein said base layer material is tensioned in the machine direction prior to attachment of said first and second strips of elastomeric materials to opposite lateral sides of said base layer material, and further comprising additional elastomeric materials attached in the cross direction to opposite longitudinal ends of said base layer material such that said composite regions of said bodyside liner extend in the longitudinal direction on each side of said center region and generally transversely across said front and back waist regions of said chassis.

9. (Original) The absorbent article as in claim 1, wherein said base layer material has been reversibly necked and creped prior to attachment of said first and second strips of elastomeric materials to opposite lateral sides of said base layer material, said base layer material being rendered stretchable such that said bodyside liner material is stretchable in the transverse direction and the longitudinal direction.

10. (Withdrawn) The absorbent article as in claim 1, wherein said bodyside liner is a separate component from said outer cover member, said bodyside liner and said outer cover member being generally coextensive and attached along side seams of said chassis, said composite regions of said bodyside liner defining longitudinal strips on each side of said center region and extending outwardly from said center region to said respective side seams.

11. (Withdrawn) The absorbent article as in claim 10, wherein portions of said composite regions of said bodyside liner are folded outboard of said absorbent body

structure so as to define longitudinally extending containment flaps on opposite lateral sides of said absorbent body structure.

12. (Previously presented) The absorbent article as in claim 1, wherein said composite regions of said bodyside liner define machine direction strips extending laterally from said center region, each of said composite regions being folded to form a folded composite region at a respective opposite side fold line of said chassis and extending laterally back under said absorbent body structure and attached to each other such that said folded composite regions also define said outer cover member of said chassis.

13. (Original) The absorbent article as in claim 12, further comprising leg elastics between said folded composite regions.

14. (Withdrawn) The absorbent article as in claim 12, further comprising elastomeric side panels attached to said chassis generally adjacent to said fold lines, said side panels attached at side seams to define a pant-like structure.

15. (Original) The absorbent article as in claim 12, wherein portions of said composite regions of said bodyside liner are folded outboard of said absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of said absorbent body structure.

16. (Original) The absorbent article as in claim 12, wherein said composite regions are also attached to an underside of said absorbent body structure.

17. (Original) The absorbent article as in claim 1, wherein said composite regions of said bodyside liner define longitudinal strips extending outwardly from said center region and defining elastomeric side panels that are attached at side seams of

said chassis to define a pant-like structure, said composite regions folded outboard of said side panels at fold lines and extending laterally back under said absorbent body structure and attached to each other such that said composite regions also define said outer cover member of said chassis.

18. (Previously presented) An absorbent article, comprising:

a chassis having a front waist region, a back waist region, and a crotch region extending between said front and back waist regions;

an outer cover member extending longitudinally between said front and back waist regions;

a bodyside liner extending longitudinally between said front and back waist regions;

an absorbent body structure sandwiched between said outer cover member and said bodyside liner;

said bodyside liner comprising a material having a necked base layer of a generally fluid permeable material, said base layer material being necked by being tensioned in a longitudinal direction, said necked base layer including a center region extending in the longitudinal direction and disposed between a first side region extending in the longitudinal direction and a second side region extending in the longitudinal direction;

a strip of elastomeric material bonded directly to said necked base layer material along said longitudinally extending first side region to form a flat, planar composite region and such that said center region of said necked base layer material is adjacent a longitudinally extending composite region of said elastomeric material and said base

layer material, said center region of necked base layer material generally overlying and bonded directly to the immediately underlying portion of said absorbent body structure in registry with the center region of necked base layer material in its necked condition; and

wherein said center region of base layer material remains generally non-elastic and said composite region is stretchable in at least a transverse direction in use of said absorbent article.

19. (Original) The absorbent article as in claim 18, wherein said elastomeric material is superimposed on and aligned with a lateral side of said underlying necked base layer material.

20. (Original) The absorbent article as in claim 18, wherein said elastomeric material is attached to said necked base layer material in a generally untensioned state.

21. (Original) The absorbent article as in claim 18, wherein said elastomeric material is attached to said necked base layer material in a tensioned state.

22. (Withdrawn) The absorbent article as in claim 18, wherein said composite region of said bodyside liner is folded at a side fold line of said chassis and extends laterally back under said absorbent body structure and attaches to an opposite lateral side of said region of base layer material such that said composite region also defines said outer cover member of said chassis.

23. (Withdrawn) The absorbent article as in claim 22, wherein said composite region of said bodyside liner is folded outboard of said absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of said absorbent body structure.

24. (Withdrawn) The absorbent article as in claim 23, wherein said composite region of said bodyside liner is folded so as to define longitudinally extending elastomeric side panels outboard of said absorbent body structure.

25. (Withdrawn) A method of producing a composite material, said method comprising:

providing a base layer of generally non-extensible material;

applying a tensioning force to the non-extensible material in a first direction to neck in the material;

superimposing and attaching a first elastomeric material along a first side of the necked non-extensible material, the first elastomeric material having a width that is less than the width of the non-extensible material;

maintaining the tensioning force on the base layer while attaching the base layer to another material such that the base material maintains its necked configuration after attachment to the other material; and

wherein a resulting composite material is formed having a region of non-extensible necked material bordered on at least one side thereof by an elastomeric region, the elastomeric region comprising a composite of the elastomeric material and necked non-extensible base layer material.

26. (Withdrawn) The method as in claim 25, further comprising superimposing and attaching a second elastomeric material along a second side opposite the first side of the necked non-extensible base layer material, the second elastomeric material having a width that is less than the width of the non-extensible base layer material, the

necked non-extensible region of the resulting composite material bordered on opposite sides by a composite elastomeric region.

27. (Withdrawn) The method as in claim 26, wherein the first and second elastomeric materials comprise an elastic film, the films being laminated to the opposite sides of the necked non-extensible base layer material such that the elastomeric regions of the resulting material are neck bonded laminate regions.

28. (Withdrawn) The method as in claim 26, wherein the elastomeric materials are attached to the necked non-extensible base layer material in an untensioned state.

29. (Withdrawn) The method as in claim 26, wherein the elastomeric materials are attached to the necked non-extensible base layer material in a tensioned state.

30. (Withdrawn) The method as in claim 26, wherein the non-extensible base layer material is tensioned in the cross direction, and the first and second elastomeric materials are attached in the cross direction to opposite longitudinal ends of the necked non-extensible base layer material.

31. (Withdrawn) The method as in claim 26, wherein the non-extensible base layer material is tensioned in the machine direction, and the first and second elastomeric materials are attached in the cross direction to opposite longitudinal ends and opposite lateral sides of the necked non-extensible base layer material.

32. (Withdrawn) The method as in claim 26, wherein the non-extensible base layer material is tensioned in the machine direction, and the first and second elastomeric materials are attached in the cross direction to opposite longitudinal ends of the necked non-extensible base layer material.

33. (Withdrawn) The method as in claim 25, wherein the other material to which the necked non-extensible base layer material is attached is an absorbent body.

34. (Withdrawn) A method of producing a bodyside liner material for an absorbent article, the material having a center region that is generally fluid permeable and non-extensible, and opposite lateral side regions that are stretchable in the cross direction, said method comprising:

providing a layer of generally fluid permeable non-extensible material;

applying a tensioning force to the non-extensible material in the machine direction to neck in the material;

superimposing and attaching strips of elastomeric material along the lateral sides of the necked non-extensible material;

the necked non-extensible material and elastomeric material strips having respective widths such that the elastomeric material strips are spaced apart on the necked non-extensible material, and the portion of the necked non-extensible material not covered by the elastomeric material strips defines the center region; and

attaching the center region to an absorbent body while maintaining the non-extensible material in its necked condition.

35. (Withdrawn) The method as in claim 34, wherein the elastomeric material strips are joined to the necked non-extensible material in a tensioned state, the resulting lateral side regions of the bodyside liner material being stretchable in the cross direction and machine direction.

9. Evidence Appendix:

None.

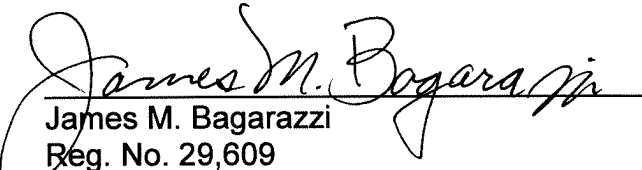
10. Related Proceedings Appendix:

No decision has been rendered.

Respectfully submitted,

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